

### **REMARKS/ARGUMENTS**

Claims 1-17, 27-29, and 37 are under examination and stand substantively rejected. Claims 18-26 and 30-36 were previously canceled. In this Amendment, claims 1, 6, 17, 27, 29, and 37 are amended, and claim 28 is canceled. Reconsideration is respectfully requested.

#### **Claim Amendments**

Support for the amendments to claims 1, 17, 27, and 37 can be found in the specification at, for example, paragraphs [08], [11], [96], [97], and [157-159], and Figs. 1a and 1b. Amended claim 37 also incorporates elements from claim 1. Support for the amendment to claim 6 can be found in the specification at, for example, paragraphs [128] and [137]. Claim 29 is amended to conform antecedent basis. No new matter is introduced.

#### **Rejection Under 35 U.S.C. §112**

Claims 1-16 and 37 were rejected under 35 U.S.C. 112, first paragraph, as allegedly lacking enablement. This rejection is traversed.

The Office Action alleges that the specification does not provide enablement for preventing or treating excess body weight. Applicants do not agree with or acquiesce to the rejection. However, for the purposes of expedited examination, amended independent claims 1 and 37 do not recite preventing or treating excess body weight. Withdrawal of this rejection is requested.

#### **First Rejection Under 35 U.S.C. §102**

Claim 37 was rejected under 35 U.S.C. §102(b) as allegedly anticipated by Kiyaschchenko, Journal of Neurophysiology 85:2008-2016 (2001). This rejection is traversed.

Amended claim 37 incorporates elements from claim 1, which is not included in this §102 rejection (e.g. individual is overweight, suffers from a weight disorder, or suffers from obesity). Withdrawal of this rejection is requested.

#### **Second Rejection Under 35 U.S.C. §102**

Claim 37 was rejected under 35 U.S.C. §102(b) as allegedly anticipated by Haynes, Peptides 20:1099-1105 (1999). This rejection is traversed.

Amended claim 37 incorporates elements from claim 1, which is not included in this §102 rejection (e.g. individual is overweight, suffers from a weight disorder, or suffers from obesity). Withdrawal of this rejection is requested.

**Third Rejection Under 35 U.S.C. §102**

Claim 37 was rejected under 35 U.S.C. §102(e) as allegedly anticipated by USPN 7,112,566 to Siegel. This rejection is traversed.

Amended claim 37 incorporates elements from claim 1, which is not included in this §102 rejection (e.g. individual is overweight, suffers from a weight disorder, or suffers from obesity). Withdrawal of this rejection is requested.

**Fourth Rejection Under 35 U.S.C. §102**

Claim 37 was rejected under 35 U.S.C. §102(e) as allegedly anticipated by USPN 7,335,640 to Siegel. This rejection is traversed.

Amended claim 37 incorporates elements from claim 1, which is not included in this §102 rejection (e.g. individual is overweight, suffers from a weight disorder, or suffers from obesity). Withdrawal of this rejection is requested.

**Fifth Rejection Under 35 U.S.C. §102**

Claim 37 was rejected under 35 U.S.C. §102(b) as allegedly anticipated by Taheri "The Role of Orexins in the Regulation of Appetite, Sleep and Arousal, Abstract Number Y16 presented at Spring Meeting, Royal College of Physicians, London, on June 1, 2001. This rejection is traversed.

Amended claim 37 incorporates elements from claim 1, which is not included in this §102 rejection (e.g. individual is overweight, suffers from a weight disorder, or suffers from obesity). Withdrawal of this rejection is requested.

**Sixth Rejection Under 35 U.S.C. §102**

Claims 17 and 27-29 were rejected under 35 U.S.C. §102(a) as allegedly anticipated by Stricker-Krongrad "Orexins/hypocretins in the ob/ob mouse: hypothalamic gene expression, peptide content and metabolic effects" Regulatory Peptides 104:11-20 (2002). This rejection is traversed.

Amended independent claims 17 and 27 are drawn to methods of increasing locomotion in an individual. According to the Office Action, Stricker-Krongrad reports an increase in feeding following upon peptide administration. Applicants note that feeding activity, which may involve the use of mouth and intestinal muscles, does not inherently require locomotion, which is typically characterized by self-propelled motion from place to place and can be monitored by an activity monitor, such as an actigraph or accelerometer. Moreover, feeding activity may involve oral, pharyngeal, esophageal, or gastric motor activity, but does not inherently involve gross motor activity, which relates to postural or locomotor activity. Hence, Stricker-Krongrad has not been shown to teach or suggest the combination of elements recited in the amended claims, and therefore is not an anticipatory reference. Withdrawal of this rejection is requested.

**Double Patenting Rejections**

Applicants acknowledge the double patenting rejections, and will consider filing a Terminal Disclaimer, if appropriate, pending resolution of the §102 issues.

**Common Ownership**

U.S. Patent Nos. 7,112,566 and 7,335,640 are assigned to The Regents of the University of California. At the time the presently claimed subject matter was made, it was owned by or subject to an obligation of assignment to The Regents of the University of California.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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PATENT

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